CF0000061598

CA 12.19/97 (2) (1)

S.T. No. 296/95

APPEAL PRISONER

Division Bench (Criminal)

No. 533 Name दलसाय

Father's Name मुन्ड़रा Resident ग्राम - भाटा पारा, भालेर
थाना - अरसगांव (फरसगांव)

Age 22 Sentenced to आजीवन / 7 वर्ष on 1/10/96

Under Section 302, 201 I.P.C. by I A.S.J. Jagdalpur.

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears If the legal practitioner does not appear within seven days he may be heard at all if legal practitioner the court may proceed at once with the case and will not be obliged to give a bearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement :- No.
2. Date of which copy received :- 1.10.96
3. Date on which appeal sent :- 22.10.96
4. Whether the prisoner wished to be represented or not :- Yes / ~~No.~~

No. 533 Name दलसाय S/o मुन्ड़रा

Continued in जिला Jail प्रथम श्रेणी जगदलपुर

No. 444 / अपीलीय Dated 22/10/96

Forwarded to the CHIEF JUDICIAL MAGISTRATE Jagdalpur.

together with a copy of Judgement or order passed in the case for favour of transmission to the proper Appleate Court.

अधीक्षक
केन्द्रीय जेल जगदलपुर
Superintendent Central Jail / Sub-Jail.

Date of receipt in C. J. M. Office. 14.1.97 with in time

Date of receipt of record to accompany.

Memo of Appeal of the Appellate Court.

No. 2(14) dated 15.1.97

Forwarded to the Hble Sessions Judge Jagdalpur

15.1.97

C. R. MAGISTRATE मुख्य न्यायिक दण्डाधिकारी
जगदलपुर

Date of receipt in Ar...

(41)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. Appeal 1219/97 **सन्** 200

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench :

Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri V.K. Shrivastava, JJ.

25-09-2006

Shri R.K. Jain, Advocate with Smt. Kiran Jain, counsel for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor with Shri U.K.S. Chandel, Panel Lawyer for the State.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 1-10-1996 passed by First Additional Sessions Judge, Jagdalpur in Sessions Trial No. 296/1995 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Sections 302 & 201 of the Indian Penal Code and sentenced him to undergo imprisonment for life and rigorous imprisonment for seven years respectively. The sentences are directed to run concurrently.

(पीछे देखिये)

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आदेश पत्रक

मामला क्रमांक ..... Cr. A 1215/97 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The case of the prosecution, in brief, is that on 6-8-1995 deceased Manglu Ram went to village Bandhpara to attend the last rituals in the house of his nephew Bandhuram. On 3-8-1995 at about 4.00 p.m. he left for his village, however, on the way the rain started, therefore, he took shelter in the house of accused Dalsai. At that time the deceased was wearing one golden chain, one bracelet and two ear rings of brass. The accused Dalsai in order to take those items, when Manglu Ram was sleeping, at about 11.00 in the night, he gagged a cloth in his mouth, thereafter, assaulted him with a stone and pressed the neck and thereby committed his murder. The dead body was buried in the kitchen garden after digging a pit upto three feet deep. Thereafter the pit was filled with sand. When Manglu Ram did not return to his house, Asman Netam, son of the deceased, lodged missing report on 13-8-1995.

The Police, doubting the accused to be a thief, on 14-8-1995, recovered from him an amount of Rs.2650/-. During the investigation on 15-8-1995 he gave information to the Police that after committing murder of Manglu Ram, he had buried his dead body in his kitchen garden; golden chain was sold to Suresh of Keshkal, and the receipt which was written by the accused in favour of Suresh was also taken

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..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

into possession. The body of Manglu Ram was exhumed at the instance of the accused from his kitchen garden. The stone was also recovered at the instance of the accused. Panchnama of the body vide Ex-P/1 was prepared in the presence of the Executive Magistrate. A lump of gold which was made by melting the golden chain and the receipt which was given by the accused in favour of Suresh were taken into possession vide Ex-P/2. The body of Manglu Ram was sent to Primary Health Center, Pharsagaon, where postmortem was conducted by Dr. J.K. Chourey and he prepared the postmortem report. The currency notes which were collected after selling the golden chain were recovered from the accused under Ex-P/3. The stone and the broken bamboo stick were taken into possession under Ex-P/4. Blood stained soil and plain soil were taken into possession under Ex-P/5, from the place where body of the deceased was buried. The spade which was used for filling the sand into the pit was taken into possession under Ex-P/6. The memorandum statement given by the accused regarding the place of dead body was recorded vide Ex-P/7. The missing report given by Asman Netam was entered in the *rojnamcha sanha* on 13-8-1995 vide Ex-P/12. Merg intimation regarding the death of Manglu Ram was given by the Assistant Sub Inspector, Pharasgaon vide Ex-P/13, based on that First Information Report was registered under

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..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -५-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Ex-P/15. *Dehati Nalshi* (Ex-P/14) was recorded by the Station House Officer, R.S. Sharma.

After competition of investigation, charge-sheet was filed in the Court of learned Judicial Magistrate First Class, Jagdalpur, who in turn committed the case to the Sessions Judge, Jagdalpur, from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish charge against the accused examined ten witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Cr.P.C., in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime.

Learned Additional Sessions Judge, after hearing the arguments of the Additional Public Prosecutor and counsel for the accused, convicted and sentenced the accused as mentioned in para one of this judgment.

We have heard learned counsel for the parties.

The fact of homicidal death of Manglu Ram has not been disputed by the counsel for the appellant. Apart from that Dr. J.K. Chourey (PW-8) who conducted the postmortem on the body

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आदेश पत्रक

मामला क्रमांक ..... CR A 1219/97 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of the deceased opined that Manglu Ram died on account of asphyxia due to throttling. The death was homicidal in nature. Therefore, on the basis of the medical evidence it is established that Manglu Ram met with homicidal death.

As far as the involvement of the accused/appellant in the crime in question is concerned, learned counsel for the accused/appellant argued in the first instance that, as per the prosecution case murder was committed on 8-8-1995 whereas the dead body was exhumed on 17-8-1995; therefore, in view of the above time gap, the body was decomposed and the same was not in identifiable condition. The second argument was that as per the merg intimation (Ex-P/13), the Police came to know about the place where the body was buried, on 15-8-1995; and the same was said to be exhumed on 17-8-1995, therefore, it cannot be said that the body was exhumed from a place which was made known by the accused vide Ex-P/7 dated 16-8-1995.

On the other hand, learned counsel for the State supported the judgment of learned trial Court.

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आदेश पत्रक

मामला क्रमांक ..... CR A 1219/97 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Having heard learned counsel for the parties, we have examined the judgment of the trial Court as well as the evidence available on record.

Coming to the first point that the dead body was not in identifiable condition, the prosecution witness namely Mahanguram (PW-1) has stated that the dead body of Manglu Ram was exhumed from the kitchen garden of the accused at his instance, but this witness has not been cross-examined. Regarding the dead body of Manglu Ram, Ramlal (PW-2), Bandhuram Korram (PW-3), Ashman Netam (PW-5), son of the deceased, Sukhlal (PW-6), Bandhu (PW-7), Tiburam, Nayab Tehsildar (PW-9), R.S. Sharma, Investigating Officer (PW-10), have categorically stated that at the instance of the accused the dead body of Manglu Ram was exhumed. These witnesses have not been cross-examined by the defence counsel on the point that body was not identifiable. Moreover, the postmortem report (Ex-P/8) does not show that the body was in advance stage of decomposition and on account of that it was not identifiable. Rather, the perusal of postmortem report shows that the body was in swollen condition, skin was loose all over the body, even the injuries which were found on the neck and other parts of the body were identifiable that there was

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

redness around and over the nose, abdomen was distended and there was brown colour bruise mark present over the neck. Even the Doctor has not been cross-examined on the point that the body was not in identifiable condition. Therefore, in view of the above, we are of the considered opinion that the argument advanced by learned counsel for the accused/appellant is devoid of merit. There is a clear cogent evidence, on the record, given by the number of witnesses that the body which was exhumed at the instance of accused was of Manglu Ram, even the clothes were also present on the body.

Now, coming to the question that whether the body was exhumed at the instance of the accused or not, it is an admitted position that the body was exhumed from the kitchen garden of the accused. It is true that merg intimation (Ex-P/13) was reduced into writing by R.S. Sharma, Investigating Officer, on 15-8-1995 in which it has been mentioned that on enquiry during the investigation accused/ appellant disclosed that he committed the murder of Manglu Ram by gagging a cloth in his mouth, assaulted him with a stone after sitting on chest. Thereafter the memorandum (Ex-P/7) dated 16-8-1995 was reduced into writing by the same Investigating Officer in the presence of six witnesses in which the place where the dead

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..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 8 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

body was buried by the accused was again disclosed by him and in pursuance of that the body was exhumed on 17-8-1995 in the presence of Magistrate. The inquest report of the body (Ex-P/1) was prepared. It has come in the evidence that the Investigating Officer moved an application dated 16-8-1995 before the Executive Magistrate for permission to exhume the body and thereafter in the presence of Nayab Tehsildar Tiburam (PW-9), it was exhumed. Therefore, in view of the above evidence it can not be said that the Investigating Officer was already knowing in advance about the place where the body was buried in the kitchen garden of the accused, as the body was exhumed at the instance of accused after removing the sand of pit which was three feet deep. Without showing the place by the accused, it was not possible to locate the pit, as the accused after filling the sand in pit, had ploughed the surface of it, in order to conceal the dead body, which is evident from Panchnama Ex-P/1. Moreover, the place where the dead body was buried was the kitchen garden of the accused. Therefore, this is a strong circumstance against the accused that after committing the murder of Manglu Ram, he buried the body of Manglu Ram. Even pair of brass ear rings and one bracelet of the deceased were recovered at the instance of the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -9-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused and the same were identified before Tiburam (PW-9) as per the test identification memo (Ex-P/11).

For the foregoing reasons, we are of the considered opinion that the prosecution has successfully established the offence under Sections 302 and 201 of the Indian Penal Code against the accused and the circumstantial evidence adduced by the prosecution stood up to the test laid down by the Apex Court, for convicting the accused based on the circumstantial evidence. From the above circumstantial evidence, the only irresistible conclusion that can be drawn against the accused is that, he was the author of the crime in question. Therefore, we do not find any illegality or infirmity in the judgment of the trial Court. Accordingly, this appeal fails and is dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
V.K. Shrivatava
Judge

padma

15/10/07

(पीछे देखिये)